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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/595,103

02/14/2006

Kyle J. Lindstrom

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06/17/2009

3M INNOVATIVE PROPERTIES COMPANY

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EXAMINER

RAHMANI, NILOOFAR

ART UNIT

PAPER NUMBER

1625

NOTIFICATION DATE

DELIVERY MODE

06/17/2009

ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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<b>Office Action Summary</b>	<b>Application No.</b> 10/595,103	<b>Applicant(s)</b> LINDSTROM ET AL.	
	<b>Examiner</b> NILOOFAR RAHMANI	<b>Art Unit</b> 1625	

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on remark dated on 03/16/2009.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 15-62 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 15-62 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                       | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | Paper No(s)/Mail Date. _____                                      |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date <u>03/18/2009</u> .  | 6) <input type="checkbox"/> Other: _____                          |

### **DETAILED ACTION**

1. Claims 15-62 are pending and claims 1-14 are cancelled in the instant application.
2. The rejection of claims 15-62 under Obvious-type double patenting over Griesgraber et al., US 7,163,947 is withdrawn in view of applicants amendment and argument in paper dated on 03/16/2009.
3. The rejection of claims 15-40, 42-46, 50-55 under 103(a) over Griesgraber et al., US 7,163,947 is withdrawn in view of applicants amendment and argument in paper dated on 03/16/2009.
4. The rejection of claims 15-40, 42-46, 50-55 under 103(a) over Griesgraber et al., US 2004/0176367 is withdrawn in view of applicants amendment and argument in paper dated on 03/16/2009.
5. The rejection of claims 47-49, 56-62 under 112, first paragraph is maintained for reason of record. Applicants argue that claims 47-49 and 56-62 are directed to methods of inducing cytokine biosynthesis in an animal and not methods for the treatment and prevention of disease. It is the examiner's position that claims 47-49 and 56-62 are drawn to method of inducing cytokine biosynthesis in an animal and a method of treating a viral disease in an animal and a method of treating a neoplastic disease in an animal comprising administering therapeutically effective amount of a compound or salt of claims 15, 27, 39. In the instant specification, applicant provides examples of the test compounds to inhibit cytokine in vitro and vivo on pages 257-261. However,

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there is no guidance for using therapeutically effective amount of the instant compounds to treat viral disease or neoplastic disease. Therefore, the rejection is maintained.

6. The rejection of claims 15-46 and 50-53 under 102(e) over Lindstrom et al., WO 2005/0324846 is maintained for reason of record. Applicants argue that Lindstrom claims priority to U.S. provisional application serial No. 60/508,634, filed on 10/03/2003. The instant application claims priority to U.S. provisional application serial No. 60/498,270, filed on 08/27/2003. Therefore, Lindstrom is not prior art to the instant application. It is the examiner's position that the instant application claims priority to PCT/US04/28021, filed on 08/27/2004 (in palm and bib data sheet). There is no priority to U.S. provisional application serial No. 60/498,270 in the e-Dan or palm. Therefore, the rejection is maintained.

7. The rejection of claims 15-38, 46-49 and 52-62 under provisionally obvious-type double patenting over the claims 4-13, 23-49, 55-75, 78-79, 81-87, 89-11 of the Lindstrom et al., US 2007/0060754 is maintained for reason of record. Applicants argue that without conceding the correctness of the examiner's position, applicant defers substantive rebuttal until the conflicting claims of the above-identified copending application have been allowed. It is the examiner's position that the pending claims 4-13, 23-49, 55-75, 78-79, 81-87, 89-11 are therefore fully embraced by the instant claims 15-38, 46-49, 52-62. Therefore, the rejection is maintained.

8. The rejection of claims 15-62 under provisionally obvious-type double patenting over the claims 1-79 of the Griesgraber et al., US 2004/0176367 is maintained for reason of record. Applicants argue that without conceding the correctness of the examiner's position, applicant defers substantive rebuttal until the conflicting claims of the above-identified copending application have been allowed. It is the examiner's position that the pending claims 1-79 are therefore fully embraced by the instant claims 15-62. Therefore, the rejection is maintained.

**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Niloofar Rahmani whose telephone number is 571-272-4329. The examiner can normally be reached on Monday through Friday from 8:30 am to 5:00 pm.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Janet Andres, can be reached on 571-272-0867. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/NILOOFAR RAHMANI/

06/05/2009

/D. Margaret Seaman/

Primary Examiner, Art Unit 1625